

THIS DISPOSITION IS NOT
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OF THE TTAB

Mailed:
May 19, 2005
Bucher

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Aristocrat Technologies, Inc.

Serial No. 76468718

Bernhard Kreten of Bernhard Kreten, Esq. & Associates for
Aristocrat Technologies, Inc.

Barbara A. Loughran, Trademark Examining Attorney, Law
Office 113 (Odette Bonnet, Managing Attorney).

Before Walters, Bucher and Drost, Administrative Trademark
Judges.

Opinion by Bucher, Administrative Trademark Judge:

Aristocrat Technologies, Inc., seeks registration on
the Principal Register of the mark PLAY FOR MONEY for goods
recited in the application, as amended, as follows:

"gaming devices, namely, gaming machines and
associated software for use therewith, to
enable the gaming machine to run," in
International Class 9.¹

This case is now before the Board on appeal from the
final refusal of the Trademark Examining Attorney to

¹ Application Serial No. 76468718 was filed on November 7,
2002 based upon applicant's allegation of a *bona fide* intention
to use the mark in commerce.

register this designation based upon the ground that this term is merely descriptive of the identified goods under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1).

Applicant and the Trademark Examining Attorney submitted briefs. Applicant did not request an oral hearing.

We affirm the refusal to register.

A term is merely descriptive, and therefore unregistrable pursuant to the provisions of Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), if it immediately conveys information of significant ingredients, qualities, characteristics, features, functions, purposes or uses of the goods or services with which it is used or is intended to be used. A term is suggestive, and therefore registrable on the Principal Register without a showing of acquired distinctiveness, if imagination, thought or perception is required to reach a conclusion on the nature of the goods or services. See In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987).

The question of whether a particular term is merely descriptive is not decided in the abstract. Rather, the proper test in determining whether a term is merely

descriptive is to consider the term in relation to the goods or services for which registration is sought, the context in which the term is used or is intended to be used, and the significance that the term is likely to have on the average purchaser encountering the goods or services in the marketplace. See In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215 (CCPA 1978); In re Intelligent Instrumentation Inc., 40 USPQ2d 1792 (TTAB 1996); In re Consolidated Cigar Co., 35 USPQ2d 1290 (TTAB 1995); In re Pennzoil Products Co., 20 USPQ2d 1753 (TTAB 1991); In re Engineering Systems Corp., 2 USPQ2d 1075 (TTAB 1986); and In re Bright-Crest, Ltd., 204 USPQ 591 (TTAB 1979).

The Trademark Examining Attorney argues (i) that this proposed mark is merely descriptive because it describes a significant feature or characteristic of applicant's gaming devices, or in the alternative, (ii) that this proposed mark is deceptively misdescriptive of a salient feature or characteristic of applicant's gaming devices.

By contrast, applicant argues that the mark PLAY FOR MONEY does not "merely" describe the applicant's goods, but that at worst, its mark may be suggestive of one potential attribute, out of many characteristics, of applicant's goods. Applicant argues that casino patrons utilize gaming

devices primarily for entertainment, being clear that there is no guarantee of monetary reward, and that the trend in the industry is toward cashless gaming systems (e.g., ticket- or voucher-driven systems). Hence, applicant argues that some thought process would be required to come to the conclusion that applicant provides gaming devices. As to the alternative refusal of deceptive misdescriptiveness, applicant argues that owners of gaming establishments approach the purchase of these goods with such care and sophistication that they are not likely to be deceived as to the nature of the goods.

Among the evidence in the record are the following excerpts from online dictionary definitions and encyclopedia articles:

MONEY: A generally accepted medium for the exchange of goods and services, for measuring value, or for making payments,²

MONEY: The official currency, coins, and negotiable paper notes issued by a government,³ and

MONEY: The coins or bills with their value on them that are used to buy things, or the total amount of these that someone has.⁴

From similar sources, the Trademark Examining Attorney points out that the word "Play" is frequently listed as

² Wall Street Words: An A to Z Guide to Investment Terms for Today's Investor, by David L. Scott, 2003.

³ The American Heritage® Dictionary of the English Language, Fourth Edition, 2000.

⁴ Cambridge Dictionary of American English, 2004.

being synonymous with the word "gambling" or "gaming." In this context, the word "play" means "to bet; wager" and "to make bets on the outcome of some event,"⁵ or to "*risk money esp. on the results of (races or business deals), hoping to win money.*"⁶ Similarly, the word "gambling" has been defined as meaning "to play a game for money or property,"⁷ and the word "gaming" has been described as "the risking of money in game of chance, especially at a casino: *gaming machines/tables.*"⁸ [emphasis supplied].

From this evidence, the Trademark Examining Attorney argues as follows:

From these highly consistent definitions taken from a variety of sources, it is very clear that gambling or casino gaming are [sic] virtually synonymous with the playing of activities and games involving the wagering or risking of money. From these entries, it is eminently clear that casino gaming machines, or the playing of gaming machines, is frequently tied directly to the wagering of MONEY for MONEY prizes or payouts - in short, to PLAY FOR MONEY.

Trademark Examining Attorney's appeal brief, p. 4. She goes on to argue that even if the initial payout from a gaming machine is in the form of a voucher or ticket, the voucher can later be redeemed for currency or coins.

⁵ The American Heritage® Dictionary of the English Language, Fourth Edition Copyright, 2000.

⁶ Cambridge Dictionary of American English, 2004.

⁷ Merriam-Webster Online Dictionary.

⁸ Cambridge Dictionary of American English, 2004.

Based upon the common dictionary meanings of the individual words PLAY FOR MONEY, and when considered in relation to the goods in question, the Trademark Examining Attorney contends that as used in the common parlance, "the composite phrase readily and immediately describes a salient feature or characteristic of the goods. The combination of the terms 'play,' 'for' and 'money' in the composite phrase PLAY FOR MONEY create[s] no double entendre, ambiguity or unique and composite commercial impression so as to remove the mark from the category of being merely descriptive." Trademark Examining Attorney's appeal brief, p. 5.

To be unregistrable under Section 2(e)(1) of the Trademark Act because the mark is "deceptively misdescriptive" of the identified goods, the idea conveyed by the mark must be not only false, but also plausible. Hence, the test for deceptive misdescriptiveness has two parts. First we must determine if the matter sought to be registered misdescribes the goods. If so, then we must ask if it is also deceptive, that is, if anyone is likely to believe the misrepresentation. In re Berman Bros. Harlem Furniture Inc. 26 USPQ2d 1514 (TTAB 1993) [the term, FURNITURE MAKERS, is deceptively misdescriptive for retail

furniture store services, not including the manufacture of furniture]. In the context of this alternative refusal, the Trademark Examining Attorney points out that on companion slot machines (from which applicant submitted "representative" literature), applicant's marks are embossed directly onto the gaming devices where the mark would be seen by the *end-users* on the casino floor. She contends that given the clear meaning of the term PLAY FOR MONEY in the context of casino gaming machines, a gambler would expect a machine bearing such a designation to pay out money prizes. In the event the gaming machine does not enable one to play for money prizes, the mark would be deceptively misdescriptive of the goods within the meaning of Section 2(e)(1) of the Trademark Act.

We find ourselves in agreement with the position of the Trademark Examining Attorney. Based on this record, we find that PLAY FOR MONEY used on gaming devices immediately conveys information as to a significant feature of the machine. Stated differently, it takes no imagination to conclude that the combined term, "Play For Money," used in conjunction with slot machines, means one can wager for money. On the other hand, in the event that a player cannot wager for money with these casino gaming devices,

then we conclude the mark is deceptively misdescriptive of the goods. In either case, Section 2(e)(1) of the Trademark Act bars registration herein.

Decision: The refusal to register this mark on the Principal Register based upon Section 2(e)(1) of the Lanham Act is hereby affirmed.